

EXCERPT FROM ORIGINAL REGULATIONS PACKAGE, DATED JULY 26, 1996

Section 1364.11 lists the code sections for which the board could issue a citation for a violation. The board is proposing to add more citable offenses, and to make technical updates in the code section numbers. The added sections will improve the board's ability to ensure efficient public health, safety, and welfare by authorizing an administrative citation for these less egregious violations rather than pursuing prosecution through the administrative hearing process. Without the inclusion of the sections proposed in this amendment, the board would have no alternative but to close the case with no meaningful public protection or action, or pursue an administrative accusation for these minor violations. By adding the following sections as citable offenses, the board has the ability to use this enforcement option depending upon the circumstances of the violation:

- Add Business and Professions Code Section 732 - Refund of overpayments. This situation typically involves a partial or full payment made by the patient to the physician where the physician is subsequently paid in full by the insurance company. This section requires refund of that duplicate payment within certain time frames. In dealing with violations of this nature, it is the position of the board to assist the consumer in obtaining a refund of any monies owed to them. As with certain other minor violations, the board attempts to resolve complaints of failure to refund overpayment without the necessity of sending the case to investigation. In that endeavor, the use of a citation and fine with abatement would be a very effective tool.
- Add Business and Professions Code Section 2221.1 – Failure to Follow Infection Control Guidelines for Blood-Borne Diseases. The board has had increasing contact with state and local health agencies regarding the failure of physicians to follow proper protocol and guidelines to protect patients from the transmission of blood-borne infectious diseases from patient to patient or physician to patient. The addition of this section as a citable offense would provide the board with a method of dealing with these transgressions in an efficient and effective manner.
- Add Business and Professions Code Section 2234 – Unprofessional Conduct. The board is seeking the addition of this section to address ongoing problems of issuing citations for certain offenses not covered by the Medical Practice Act. For example, the Department of Health Services has statutes and regulations which impose a duty on health care providers (physicians are included in the list of providers) to notify local health authorities whenever they treat a patient that has certain communicable diseases (not blood-borne) such as tuberculosis. The issuing of a citation and fine provides an excellent means of effecting action in this area. The laws governing this reporting further state the health care provider is to instruct the patient and/or family on precautionary measures to be taken for preventing the spread of the disease. The board's medical consultants confirm that failure to make these reports is unprofessional conduct, therefore, a physician can be cited for Business and Professions Code Section 2234 with reference to the appropriate statute for regulation violated.

The board does not have current statistics from the local Health Officers on noncompliance with the reporting requirements for Blood-Borne diseases and communicable diseases. The board is informed by the local Health Officers that the noncompliance rate is on the rise and they have been informed by local prosecutors that these cases do not lend themselves to criminal prosecution. Therefore, the addition of these sections as citable offenses would provide the board with an effective option of dealing the less egregious violations.

The proposed subsections of Business and Professions Code Section 2234 are as follows:

- Add Business and Professions Code Section 802(b) (as a subsection of B&P 2234) – Failure of a physician to report malpractice settlements of \$30,000 or more when they have no malpractice insurance. This section carries criminal sanctions against the physician for failure to report settlements as required. The criminal sanctions are enhanced for knowing and intentional failure to report, or a conspiracy with another not to report the malpractice settlement. The addition of this section to the citation and fine regulations would give the board another option should the facts and circumstances of the case deem a citation an appropriate disposition. This has been recommended by the Attorney General's Office who agrees that many of these violations do not warrant an administrative accusation.
- Add Business and Professions Code Section 802.1 (as a subsection of B&P 2234) – Failure of a physician to report being charged and/or convicted of a felony. This section requires physicians to report to the Medical Board when they have been charged with, or convicted of a felony. Currently, a violation of this section is a criminal offense punishable by a fine of \$5,000. Adding this section to the list of citable offenses would give the board the option of issuing an administration citation in lieu of filing criminal charges.
- Health and Safety Code Sections 10203 and 10204 were already included in this regulation. The board is making a nonsubstantive, technical change, by moving these section in the regulation from the former (a)(55) and (a)(56) to the new subsections (a)(27)(C) and (D) (subsections of B&P 2234) so that they will be listed in numerical order.
- Add Health and Safety Code Sections 120250, duty to report persons with any infectious, contagious, or communicable disease to local health officer; 121362, failure to report persons with active tuberculosis; 121363, the duty to examine or refer for examination household contacts of persons with active tuberculosis; and, Title 17, Article 1, Section 2500, Code of Regulation, reporting requirements to local health officers, (as subsections to B&P 2234) – The board has had increasing contact with state and local health agencies regarding the failure of physicians who treat persons with infectious, contagious or communicable disease, or active tuberculosis to report these incidents to the local health officer. The addition of these sections as citable offenses would provide the board with a method of dealing with these violations in an efficient and effective manner.